



UNITED STATES DEPARTMENT OF COMMERCE
Office of the Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

NOV 27 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Thomas Earl Pryor
Jade Venture Group LLC
2121 Four Mile Road N.
P.O. Box 3419
Traverse City, MI 49685-3419

Dear Mr. Pryor:

By letter to Mr. Karl Gleaves dated December 7, 2000, you filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to the federal consistency requirements of the Coastal Zone Management Act of 1972 (CZMA), as amended, 15 U.S.C. Sec. 1451 et seq., and by implication, the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. You sought a Secretarial override of the State of Michigan's (State's) denial of your application for conveyance of public trust bottomlands to construct a floating pier and place mooring buoys in the lands and waters of Lake Michigan.

The record in this appeal indicates that you made application to the U.S. Army Corps of Engineers (USACE) for a permit under the Rivers and Harbors Act of 1899, for the same project, at about the same time you applied for a conveyance under State law. Your permit application to the USACE contained language certifying consistency with the Michigan Coastal Management Program (MCMP). While it is unclear whether actual notice of this certification was conveyed to the State at that time, the State did receive notice of the application via the USACE's Joint Public Notice of the application on December 10, 1999. The federal permit was granted on July 19, 2000. I find no evidence of objection by the State to your certification that your project is consistent with the MCMP until November 9, 2000.



Under the CZMA Section 307, after an applicant for a federal permit certifies that a proposed project is consistent with the State's approved coastal plan, the State has 6 months to either object or concur with the applicant's certification. If an objection by the State is not provided within 6 months, concurrence is conclusively presumed.

16 U.S.C. Sec. 1456(c)(3)(A) and 15 CFR Sec. 930.62(a).

Here the State of Michigan received notice of your permit application on or before December 10, 1999. No objection was made until after the USACE permit under the Rivers and Harbors Act had been properly issued on July 19, 2000. As the State allowed 6 months' time to pass without objection, the State is presumed to have concurred with your consistency certification. Nevertheless, you filed an appeal with the Secretary based on the State's denial of a related application for a state conveyance of public trust lands pursuant to state law. The briefs by both parties argued the merits of the proposed project based on the application for conveyance of public trust bottomlands under Michigan law.

Based on the record before me, I have concluded that the State of Michigan is presumed to have concurred with the consistency certification you submitted with your application to the USACE for a permit pursuant to the Rivers and Harbors Act of 1899. I further conclude that this appeal was filed in the mistaken belief that the CZMA granted the Secretary authority to review the denial of state permits and that the sole subject matter described in this appeal is the State's denial of your application for conveyance of public trust bottomlands pursuant to Michigan law. The Secretary is not granted such authority by the CZMA or the federal law.

Therefore, I dismiss this appeal for good cause pursuant to 15 CFR 930.129; good cause in this case being lack of jurisdiction over the conveyance of public trust bottom lands pursuant to Michigan law. This dismissal constitutes final agency action pursuant to the Administrative Procedure Act, 5 U.S.C. Sec. 704.

Under separate cover, NOAA will return the \$200.00 application fee you submitted on April 10, 2001.

If you have any questions regarding this matter, please contact Suzanne Bass at 301-713-2967, extension 213.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott B. Gudes" followed by a stylized flourish.

Scott B. Gudes
Acting Under Secretary
for Oceans and Atmosphere/Administrator
and Deputy Under Secretary

cc: Mr. Hal Harrington
Michigan Dept. of Environmental Quality
John Konik
U.S. Army Corps of Engineers